THE WHOLE

PROCEEDINGS

IN THE

CAUSE on the ACTION

Brought by

The Rt. Hon. GEO. ONSLOW, Eſq.

AGAINST

The Rev. Mr. HORNE,

ON

FRIDAY, April 6, at KINGSTON, for a

DEFAMATORY LIBEL,

Before the Right Honourable

Sir WILLIAM BLACKSTONE, Knt.

One of the Juſtices of His Majeſty's Court of King's Bench.

Taken in Short-hand (by Permiſſion of the Judge)

By JOSEPH GURNEY.

LONDON,

Printed for T. DAVIES, in Ruſſel-ſtreet, Covent-garden;
and J. GURNEY, in Holborn, oppoſite Hatton-garden.

MDCCLXX.

(Price One Shilling)

PRICE

THE WHOLE

PROCEEDINGS

In the CAUSE between

The Rt. Hon. GEO. ONSLOW, Eſq.

AND

The Rev. Mr. HORNE.

THE cauſe was opened by Mr. *Woodeſon*; after which Mr. Serjeant *Leigh*, ſpoke as follows:

May it pleaſe your lordſhip and you gentlemen of the jury, I am likewiſe of council in this cauſe for the plaintiff, the right honourable George Onſlow, who has brought this action againſt the defendant, the reverend Mr. Horne, in the firſt place, to eſtabliſh by your verdict, his character, which has been moſt violently attacked; and then to recover a ſatisfaction at

your hands, for the damages, which ſuch an attack muſt occaſion to any gentleman, in the ſituation in which the plaintiff ſtands.

The plaintiff at the time of publiſhing the papers, of which we now complain, was one of the lords of the treaſury; a privy counſellor, and a repreſentative in parliament for this county. The defendant, Mr. Horne is a gentleman, a clergyman, vicar of Brentford in Middleſex, I believe an entire ſtranger to Mr. Onſlow; there had been no intercourſe between them; nothing therefore, that ſhould have in any reſpect juſtified Mr. Horne in abuſing, and traducing Mr. Onſlow's character. He could have given him no perſonal offence, he was not in a ſituation from whence there ſhould have ariſen any rivalſhip, between them of any ſort or kind; but ſo it happened, from whence it is impoſſible to gueſs, that Mr. Horne had, for ſome time before the publiſhing of the libel, mentioned in this declaration, conceived great malice againſt Mr. Onſlow; he had affected upon all occaſions to treat him with contempt, and to caſt reflections upon his character, which if they were true—which if Mr. Onſlow really deſerved—he was unfit for either of thoſe offices which he is ſtated on the declaration to have held; he was unfit

undoubtedly

undoubtedly to be truſted with the public money of this country, or the diſpoſal of offices and employments; he muſt be moſt unworthy to be of the privy council to his majeſty, or to repreſent ſo reſpectable a county as this of Surry. The firſt attack, or at leaſt the firſt public one, that Mr. Onſlow ever heard that Mr. Horne had made upon his character, was, I think, at a meeting of the gentlemen and freeholders of this county, to conſider of petitioning the king on the affair of the Middleſex election; it did not ſeem material to this buſineſs that there ſhould be any perſonal invectives introduced againſt Mr. Onſlow, or any other particular perſon; the meeting was for applying to the throne, on account of what the freeholders thought a public grievance; and I own it does not appear to me to add any weight to that meeting, to reflect upon particular perſons. Mr. Horne did there chooſe to repreſent Mr. Onſlow as a man that would promiſe fair, but was incapable of keeping his word—he hoped to ſee him there, and he ſaid he would then have told him ſo to his face; and that if Mr. Onſlow would lay aſide his privilege, he would lay aſide his gown—that he believed he never ſpake a word of truth, but when it was for his intereſt; he then ſaid that Mr. Onſlow had treated a

friend of his, Mr. Wilkes, in a bad manner; and abuſed Mr. Onſlow in a very violent manner. Mr. Onſlow was not there; it was reported to him, and you may readily conceive it cauſed ſome trouble to Mr. Onſlow, to find that a gentleman, with whom he had had no perſonal connection, and with whom there could be no perſonal quarrel, ſhould have thought proper to ſtigmatize him in this manner, in the public face of the county which Mr. Onſlow had the honour to repreſent in parliament. Some time after this there appeared in the Public Advertiſer, a letter which contains part of the complaint made in this declaration; and it will be neceſſary for me, gentlemen, to ſtate it to you minutely and particularly; becauſe I think the reading of the letters in this cauſe proves the libel better than any argument, or inference, or comment I can make; they ſpeak for themſelves, and you will judge if they do not convey to your minds ſuch an abuſe, as you will think any man juſtified, nay called upon, to vindicate his character before you for.

I do not mean, by any thing I ſay, at all to twiſt or wreſt their meaning to any thing but what they obviouſly contain; therefore I ſhall read them at length, that you may judge whether

ther they do not impreſs your minds with the ideas Mr. Onſlow complains they contain.

(Reads the Letter.)

To the Right Hon. GEORGE ONSLOW, *Eſq;*

SIR,

I Have heard from very good Authority that one of the Lords of the Treaſury has lately gained a thouſand Pound in a very common and uſual Manner, which is yet likely to be attended with a very uncommon and unuſual Conſequence. Mr. ——— applied to the Right Hon. Mr. ———, for his intereſt for a certain lucrative Poſt in America. The Gentleman was informed that a thouſand Pounds placed in the Hands of Mrs. ——— would inſure him the Place. Mr. ——— not having the Money, prevailed on Col. —— to join with him in a Bond for that Sum to the Lady to whom he was directed. So far, Sir, all is in the common Track: What follows is the wonderful Part of the Tranſaction. This Lord of the Treaſury kept his Word, and the Gentleman was appointed to the office he had paid for! and ſtranger ſtill, Lord ——, who diſcovered this Bargain and Sale, is offended at it, and inſiſts on the Diſmiſſion of this Lord of the Treaſury.

Now, Sir, I muſt intreat you to favour one of

your Conſtituents with the Name of this Lord of the Treaſury, for you, no doubt, who ſet at that Board yourſelf, muſt be acquainted with him.

Aſh-Court,
July 11.

Another Freeholder of Surrey.

You ſee, gentlemen, that the meaning of this letter, is to convey an idea to the world, that Mr. Onſlow, to whom it is directed, had ſold a lucrative poſt in America; that lord Hillſborough had diſcovered this infamous bargain, and had inſiſted upon Mr. Onſlow's diſmiſſion; and it is ſubſcribed a *Freeholder of Surrey*, in order to point out Mr. Onſlow to his conſtituents, to direct their eyes to the conduct of their member; and I hope, when I ſay this, I don't carry the meaning of this letter one tittle beyond its natural plain import.

In the firſt place, why addreſs a letter particularly to Mr. Onſlow to inform him of this? And it ſays, that the gentleman, whom you will find preſently to be one Mr. Burn alluded to, that he applied to the right hon. Mr. —— for his intereſt, ſtating the right hon. Mr. —— to be one of the lords of the treaſury. Now there was not at that time any one lord of the

treaſury

treaſury to whom that appellation was proper: the other lords of the treaſury, excepting the duke of Grafton and lord North, had not the ſtyle, not being right honourable; therefore it is very plain that the writer of this meant Mr. Onſlow. Indeed no man could read it without ſeeing that it did mean Mr. Onſlow; and there could be no uſe, there could be no pleaſantry in the letter, without it was applied to Mr. Onſlow; and I am ſure the writer, be he who he may, (which we ſhall give you in evidence) would have had a bad opinion of the capacity of the reader, if he had doubted that this right hon. Mr. ——— was Mr. Onſlow. The writer has taken care in another letter to put it out of all doubt; for he has explained his meaning ſo fully, that the dulleſt man will ſee that he meant to charge Mr. Onſlow with having tranſgreſſed his duty as a truſtee for the public in the office he held, by proſtituting it;—by ſelling lucrative poſts in the gift of the lords of the treaſury;—that it had rendered him ſo infamous to that board, that lord Hillſborough, who had diſcovered the bargain and ſale, inſiſted upon his diſmiſſion. I fill up that blank with Hillſborough, becauſe the writer of this letter, in his ſecond letter, has ſo filled it up himſelf. Mr. Onſlow, you may eaſily imagine, was alarmed at this; and he was more ſo, becauſe in truth he had no more

to do with the diſpoſal of the place alluded to than I have; it having been diſpoſed of long before, and he not having enquired about it. Mr. Burn was a ſtranger to Mr. Onſlow; but yet he found that the author of this letter, like all men who mean to propagate ſcandal, had dreſſed up a ſtory, of which ſome circumſtances were founded in truth, to give the greater edge to his malice, and prevent the tale from having the appearance of fiction. It ſo happened, there was a captain Burn, a gentleman I am told of character in the army, I don't know him perſonally, he had been duped by a man, one *Watkins*, at Charing-croſs, who, as I underſtand, offers himſelf to aſſiſt all men that want places. Weak men are apt to be a little blinded by views of intereſt. In order to give a countenance to what Mr. Watkins ſaid to Mr. Burn, in order to impoſe upon him, who, though a very good ſoldier, was not well acquainted with buſineſs, he told him, Mr. Onſlow would give him his intereſt; and that the warrant was making out at the treaſury, he would have it that day, or the day after. Mr. Burn credulouſly believing this ſtory, went to the ſecretary, and enquired whether the warrant was making out for the place: they told him it had been filled up a great while; there was no ſuch place vacant; there had been ſome

months

months before, but it was given to a gentleman who was then in poſſeſſion of it. He ſaid he had been given to believe that he was to have this place, that Mr. Onſlow would render him his aſſiſtance in it; and in conſequence of that he had advanced, much to his own inconvenience, a thouſand pounds. This alarmed theſe gentlemen; they did not publiſh it in the news-papers, but applied to Mr. Onſlow, telling him what this man had ſaid. He was exceedingly alarmed; he knew nothing of the place, nor of this Burn, and had no connection with this Watkins of any ſort or kind. It was a groſs impoſition; and a day or two afterwards I believe he likewiſe received a letter from Mrs. Burn, a letter of complaint, telling him that they had been impoſed upon, and that his name had been made uſe of; and therefore ſhe begged him to tell her whether there was any truth in it, and upon what footing ſhe and her huſband ſtood with regard to this purchaſe. He anſwered her letter, and told her ſhe had been groſly impoſed upon; he told her he knew nothing of the place, never thought of it, nor knew any thing of the parties mentioned. He ſaid it was a groſs abuſe upon him; and he offered all the aſſiſtance in his power, as every honeſt man would, to bring this piece of villainy to light, that Burn and his wife might

not be cheated of their money, by the ſame man that had abuſed Mr. Onſlow, by mentioning his name in a tranſaction in which he had no buſineſs. Thus the caſe ſtands, when this letter of the fourteenth of July was publiſhed. Mr. Onſlow in order immediately to prevent the ſpreading a report ſo much to his diſadvadtage, and ſo totally void of foundation, cauſed a letter to be printed in the Public Advertiſer, which is to this effect (*reads it.*)

To the Printer of the Public Advertiſer.

SIR, *July* 16.

HAVING juſt now read a Letter containing, by evident Inſinuation, a moſt audacious Attack upon my Character, printed by you, in your Paper of Friday laſt, aſſerting a groſs and infamous Lye from Beginning to End; I do hereby publicly call upon you to name the Perſon from whom you received the Account you have preſumed to publiſh. If you are either unable or unwilling to do this, I ſhall moſt certainly treat you as the Author, and, in Juſtice both to myſelf and others, who are every Day thus malignantly and wickedly vilified, ſhall take the beſt Advice in the Law, if an Action will not lie for ſuch atrocious Defamation, and if I may not hope to make an Example of the Author of it.

The

The Scurrility in general which has been of late ſo heaped upon me in the public Papers, I have hitherto treated with the Contempt my Friends and myſelf thought it deſerved, and ſuffered it to paſs with Impunity; but this laſt is ſo outrageous, and tends ſo much to wound my Character and Honor in the tendereſt Part, that I am determined, if practicable, to ſee if a Jury will not do me and the Public Juſtice againſt ſuch a Libeller; and whether they will not think the robbing an innocent Man of his Character is a Robbery of the moſt dangerous Kind, and that the Perpetrators of it will ſtick at nothing.

For the preſent, I muſt content myſelf with only laying before the Public the two following Letters, which will explain to them all the Knowledge I had of the deteſtable Fraud, which has been taken Advantage of to charge me with Corruption; a Crime, which, of all others, I hold the moſt in Abhorrence. I defy the whole World to prove a ſingle Word in your libellous Letter to be true, or that the whole is not a barefaced, poſitive, and entire Lie—That it is ſo, I do aſſert, and I call upon any body, if they can, to diſprove what I ſay.

GEORGE ONSLOW.

You find, gentlemen, this letter ſpeaks that ſpirit of indignation which is natural to a man

who knows himſelf innocent of a charge of this kind, and finds it ſpread againſt him; a man in ſuch a ſituation will always expreſs himſelf warmly, if in truth he is innocent. Mr. Onſlow likewiſe ſubjoined theſe two letters, as he ſaid he would in his letter to the printer. The firſt is from Mrs. Burn, dated from New Bond ſtreet, June — 1769 (*reads it.*)

COPY *of a* LETTER *to Mr.* ONSLOW, *received the 27th of June.*

New Bond Street, June 25, 1769.

SIR,

I Beg you will pardon my thus addreſſing you, a Liberty I could not thing of, was any Thing leſs than my Family's Bread at Stake.— Some Weeks paſt my Huſband paid a large Sum of Money (which gave us inexpreſſible Sorrow to raiſe) to a Party, who proteſt they are empowered by you to inſure him, in Return, the Collectorſhip of Piſcataway in New Hampſhire. I have been told this Day one Hughes is in Poſſeſſion of the ſame, and the Treaſury Books confirm the News. I beg leave moſt earneſtly to intreat you will inform we whether Mr. Hughes is under any Engagement to reſign, or whether we are duped by thoſe who have taken our Money.

Mr.

Mr. Burns has had the ſtrongeſt Recommendations from Perſons of undoubted Veracity, and I believe on all Accounts, will be found to be perfectly capable and worthy of the Employment.

Once more I intreat, good Sir, you will excuſe this Trouble, which is cauſed by a Heart almoſt broken with the Fear and Terror of a Diſappointment.

With the profoundeſt Reſpect,
I am, SIR,
Your moſt obedient
humble Servant,
MARY BURNS.

To this is ſubjoined Mr. Onſlow's anſwer, which he wrote at Ember Court, his houſe in this county, dated June 27, 1769 (*reads it.*)

Mr. ONSLOW's ANSWER.

Ember Court, June 27, 1769.

MADAM,

YOUR Letter was brought down to me hither only To-day, or I ſhould have anſwered it ſooner. Without having the Honor of being known to you or Mr. Burns, it gives me much concern that any body ſhould be ſo impoſed upon as you have been, and as much Indignation that my Name ſhould be made ſo infamous a Uſe of. I ſhould have been under

an equal Degree of Surprize, had I not this Morning had ſome Intimation of the Matter from Mr. Pownall and Mr. Bradſhaw, and made ſome Enquiry into it of Mr. Watkins at Charing Croſs, with a Determination to ſift this ſhocking Scene of Villainy to the bottom; and which I ſhall now be encouraged in by the Hopes of getting you your Money reſtored to you, as well as the earneſt Deſire I have to bring the Perpetrators of this Roguery to the Puniſhment and Shame they deſerve.

For this Purpoſe, might I beg the Favor of Mr. Burns to meet me at my Houſe in Curzon Street about Ten o'Clock on Friday Morning, I will go with him to Mr. Pownall's, of which I have given him Notice; and I wiſh Mr. Burns would bring with him Mr. Watkins, or any body elſe that can give Light into this unhappy and wicked Affair.

Till this Morning I never in my Life heard a ſingle Word of either the Office itſelf, nor of any of the Parties concerned: You will judge then of my Aſtoniſhment, and indeed Horror, at hearing of it To-day from Mr. Bradſhaw.

I am, Madam, &c.

GEORGE ONSLOW.

To which is ſubjoined, by way of Poſtcript.

Since the writing of the above Letters, more of this Fraud has been detected, and further Enquiry

quiry is making, in order to bring the Actors in it to Juſtice. A Woman of the Name of Smith, who lives near Broad-ſtreet, is the Perſon who appears to be principally concerned in the Fraud, the Money being, it ſeems, for her Uſe.

You ſee, gentlemen, by this letter, that Mr. Onſlow conſidered, as every body muſt, that this man and his wife had been the dupes of ſome deſigning perſons; that they wanted to plunder the poor men of his money; that Mr. Onſlow, with a zeal that every man would have, whoſe name had been made ſuch a uſe of, applied to theſe perſons to enable him to detect the fraud. They were innocent indeed in compariſon of thoſe that meant to cheat them; he wanted their aſſiſtance to ſee if he could not bring the directors of this plan to proper puniſhment; that ſeems to be the natural conſtruction of this letter; every body will ſee a zeal in Mr. Onſlow to clear his own character, and puniſh the guilty. The writer of the firſt letter, and of the ſecond, I am going to read to you; it has upon him a very different effect; he has endeavoured to wreſt the meaning of this letter from its natural import, and to make the world believe that all that Mr. Onſlow has ſaid upon this occaſion was an evi-

dence

dence of his guilt;—to make the world believe that the ſtory was true, notwithſtanding his contradiction of it; and upon the whole to caſt the moſt cruel aſperſions upon Mr. Onſlow, to dare him to vindicate his character — to tell him he was ready to meet him before a jury, and to call upon him for that action which is now trying by you. Gentlemen I will read the letter to you. " Good Sir," adopting the ſtyle of Mrs. Burn's letter (*reads the ſecond letter.*)

To the RIGHT HONOURABLE
GEORGE ONSLOW.

GOOD SIR,

IF with another INNOCENT Man, Lord Holland, you too were ambitious to add to the Liſt of Mr. Walpole's Right Honourable Authors, you might like him have expoſed yourſelf with more Temper, and have called Names in better Engliſh.

I ſhould be ſorry to libel you by miſtaking your Meaning, but the ſtrange Manner of wording your firſt Sentence leaves me at a Loſs to know whether you intend that my Letter, or —— your own Character is " *a groſs and infa-*
" *mous Lie from Beginning to End.*"

You may ſave yourſelf the Expence of taking " *the beſt Advice in the Law.*" Depend upon

upon it you can never "*hope to make an Exam-* "*ple of the Author, when the Publiſher is unable* "*or unwilling to give up his Name.*" And you need not wait for a Jury to determine, that "*robbing a Man is* certainly *a Robbery.*" But you ſhould have conſidered ſome Months ſince that it is the ſame Thing whether the Man be guilty or innocent; and whether he be robbed of his Reputation or ——— of his Seat in Parliament.

In the Public Advertiſer of Friday, July 14, there is a Letter FROM you as well as TO you. If that is the *Scurrility* you ſpeak of, I agree with you that it has been treated *with the Contempt it deſerves* by all the World; but how you can ſay that it has paſſed with *Impunity* I own I cannot conceive, unleſs indeed you are of Opinion with thoſe hardened Criminals who think that, becauſe there is no corporal Sufferance in it, the being gibbetted in Chains and expoſed as a Spectacle makes no Part of their Puniſhment.

The Letter written by you to Mr. Wilkes tends more "*to wound your Character and Ho-* "*nour*" than any other, and yet you paſs it over in Silence. But you ſhall, if you pleaſe, prove to the World that thoſe who have neither Character nor Honour may ſtill be wounded in a very tender Part——their Intereſt. And I

believe Lord Hillſborough is too noble to ſuffer any Lord of the Treaſury to proſtitute his Name and Commiſſion to Bargains like that I have expoſed; but will, if he continues to preſide at the Board of Trade, reſolutely inſiſt either on ſuch Lord's full Juſtification or Diſmiſſion.——Hinc illæ Lachrymæ.

You "*defy the whole World to prove a ſingle "Word in my Letter to be true; or that the whole "is not a barefaced poſitive and entire Lye.*" The Language of the laſt Part of this Sentence is ſuch as I can make no Uſe of, and therefore I return it back on you to whom it belongs: The Defiance in the firſt Part I accept, and will diſprove what you ſay.

My Letter can only be falſe in one Particular; for it contains only one Affirmation, namely, that I heard the Story I relate from very good Authority. It then concludes with a queſtion to you of—who is this Lord of the Treaſury that ſo abhors Corruption? Which Queſtion ſince you have anſwered, I too will gratify you, and in return for yours do hereby direct the Printer to give you my Name; which, humble as it is, I ſhould not conſent to exchange with you in any other Manner.

Now, Sir, I do again affirm that I heard the Story from the beſt Authority: And that it is not my Invention your own Letter is a Proof,

for I might have heard it either from Mrs. Burns, or from Mr. Pownal, or Mr. Bradſhaw, but I heard it from better Authority. I go farther, I do ſtill believe the Story as I related it to be true; nor has any thing you have ſaid convinced me to the contrary. I do not mean to charge you or any one; but ſince you have condeſcended to anſwer my former Queſtion, be kind enough to explain what follows.

Mr. Pownal is Secretary to the Board of Trade. Mr. Bradſhaw is Secretary to the Treaſury. Why did theſe two Secretaries come together to you? Were they ſent by their Principals or not? Who firſt detected this very ſcandalous though very common Traffick? Has not Lord Hillſborough that Honour? And is not your exaggerated "*Abhorrence of Corruption, your Aſtoniſhment, and indeed* HORROR *at this ſhocking Scene of Villainy*" vaſtly heightened by the calm, and therefore unſuſpected Diſapprobation of his Lordſhip; who does not ſeem to think with you that every Whore ſhould be hanged alive; but only that they ſhould be TURNED OUT of honeſt Company.

How came you ſo inſtantly to entertain Hopes of getting the Money reſtored to Mrs. Burns? when you declared, that "*till that Morning you never in your Life heard a ſingle Word of either the Office itſelf, nor of any of the Parties concerned.*"

" *cerned.*" Jonathan Wild uſed to return ſuch Anſwers; becauſe he knew the Theft was committed by ſome of his own Gang.

You pretend to have given to the Public " *all the Knowledge you have of this deteſtable* " *Fraud.*" I cannot believe it, becauſe I find nothing in your Letter on which to ground your Hopes of reſtoring the Money to Mrs. Burns; and eſpecially becauſe in three Weeks after this Letter, i. e. from June 27 to July 18 you have only diſcovered that " *Mrs. Smith appears to be* " *principally concerned in this deteſtable Fraud,* " *the Money being it ſeems for her Uſe.*" Sir, do you not know WHOSE Mrs. Smith is? And are you not acquainted with that Gentleman? Have you cauſed Mrs. Smith, or any one elſe to be taken into Cuſtody? Have you taken " *the beſt Advice in the Law, and are you determined* " *to ſee if a Jury will not do you and the Public,* " *Juſtice*" for this deteſtable Fraud? Or is there yet left one Crime which you abhor more than Corruption; and for which you reſerve all your Indignation? But why this Anger? He that is innocent can eaſily prove himſelf to be ſo; and ſhould be thankful to thoſe who give him the Opportunity by making a Story public. Malicious and falſe Slander never acts in this open Manner; but ſeeks the Covert, and cau-

cautiouſly conceals itſelf from the Party maligned, in order to prevent a Juſtification.

If any Perſons have done your Character an Injury by a Charge of Corruption, *they* are moſt guilty who ſo thoroughly believed you capable of that Crime as to pay a large Sum of Money on the Suppoſition : (an Indignity which I proteſt I would not have offered to you, though you had negotiated the Matter, and given the Promiſe yourſelf.) And yet I do not find you at all angry with them when they tell you their Opinion of you without Scruple. On the contrary, you pity Mrs. Burns in the kindeſt Manner, which ſhews plainly that your Honour is not like Cæſar's Wife. Nay you ſeem almoſt to doubt whether you "*might beg the Favour* "*of Mr. Burns to meet you at your Houſe in Cur-* "*zon-Street*;" that is, you humbly ſolicit Mr. Burns to do you the *Favour* of accepting your Aſſiſtance in the Recovery of his Money.

Archbiſhop Laud thought to clear himſelf to Poſterity from all Aſperſions relative to Popery by inſerting in his Diary his Refuſal of a Cardinal's Hat; not perceiving the Diſgrace indelibly fixed on him by the Offer. "*Mr. Burns* "*has had the ſtrongeſt Recommendations from Per-* "*ſons of undoubted Veracity, and I believe on all* "*Accounts will be found to be perfectly capable and* "*worthy of the Employment.*" The Letter from

Mrs.

Mrs. Burns to you does by no Means declare her to be an Ideot. Colonel —— (whom you forbear to mention) is a Man of Senſe, and well acquainted with the World. It is ſtrange they ſhould all three believe you capable of this Crime, which "*of all others you moſt hold* "*in Abhorrence.*"

Mr. Pownal, Mr. Bradſhaw, and their Principals, are ſuppoſed to know ſomething of Men and Things, and therefore I conclude they did not believe you concerned in this Buſineſs: Though I wonder much that, *not* believing it, both the Secretaries ſhould wait on you ſo ſeriouſly about it; but perhaps they may think that when Honour and Juſtice are not the Rules of Men's Actions, there is nothing incredible that may be for their Advantage.

But, Sir, whatever may be their Sentiments of you, I muſt intreat you to entertain no Reſentment to me. My Opinion of your Character would never ſuffer me to doubt your Innocence. If indeed the Charge of Corruption had been brought againſt a low and ignorant Debauchee, who, without the Gratifications and Enjoyments of a Gentleman, had waſted a noble Patrimony amongſt the loweſt Proſtitutes; whoſe Neceſſities had driven him to hawk about a Reverſion on the moderate Terms of One Thouſand for Two Hundred; whoſe deſ-

perate

perate Situation had made him renounce his Principles and deſert his Friends, thoſe Principles and thoſe Friends to which he ſtood indebted for his chief Support; who for a paltry Conſideration had ſtabbed a DEAR OLD FRIEND, and violated the ſacred Rights of that grateful Country that continued to the Son the Reward of his Father's Services. If the Charge had been brought againſt ſuch an one, more fit to receive the Public Charity than to be truſted with the DISPOSAL and MANAGEMENT of the Public Money, ſmall Proof would have been ſufficient; and inſtead of conſidering it as a Crime the moſt to be abhorred, we might have ſuffered Corruption to paſs amongſt the Virtues of ſuch a Man.

But your's, Sir, is a very different Character and Situation, in the clear and unincumbered Poſſeſſion of that paternal Eſtate with which your Anceſtors have long been reſpectable; with a Penſion of Three Thouſand, and a Place of One Thouſand a Year; with the certain Proſpect of Lord Onſlow's large Fortune which your Prudence will not anticipate; grateful to your Country, faithful to your Connections, and firm to your Principles, it ought to be as difficult to convict you of Corruption as a Cardinal of Fornication; for which laſt Purpoſe by the

Canon

Canon Law no leſs than ſeventy two Eye-Witneſſes are neceſſary.

Thus, Sir, you ſee how far I am from caſting any Reflection on your Integrity: However if, notwithſtanding all I have ſaid, you are ſtill reſolved to try the Determination of a Jury, take one Piece of Advice from me: Do not think of proſecuting me for an INSINUATION: Alter your Charge before it comes upon Record, to prevent it's being done afterwards; for though Lord Mansfield did not know the Difference between the Words when he ſubſtituted the one for the other, we all know very well now that it is the TENOR, and not the PURPORT, that muſt convict for a Libel, which indeed almoſt every Student in the Law knew before.

ANOTHER FREEHOLDER *of* SURREY.

I need not add, is that an abuſe of Mr. Onſlow; is it not a moſt groſs one? And whatever the pleaſantry of the letter may be, whatever the gentleman's abilities as a writer may be, it is very far from being an excuſe, when thoſe abilities are proſtituted for the cauſe of defaming an innocent man. The greater abilities the defendant has, the more danger; a publication from him is more cordially read, and is more caught at; and the character

of

of a writer, who is ſuppoſed to be of abilities, ſuch as are ſhewn in this letter, every body muſt believe, whoever the writer was, knew his ground, knew that Mr. Onſlow dare not proſecute; for if he dare, would he have told him to bring his cauſe before a jury, and defy him to do it? to be thankful to thoſe that had given him an opportunity to clear his character, by pointing out, in the ſtrongeſt manner, that Mr. Onſlow dare not clear his character; and he dare not do it, becauſe he knew the aſperſions were true. Is there any man that would read this, that would not apply it in this manner to Mr. Onſlow? Is it not as clear as day, that the author meant it ſhould be ſo applied? As for introducing the compliments in that ironical manner, at the latter end of this letter, perhaps they are the worſt parts of the libel; they might as well be couched in ironical as in poſitive expreſſions. I would not have you put a conſtruction here upon letters, that I would not have you put in your cloſets; do not think I would wiſh you to take my inuendos, if the libel does not ſpeak for itſelf. Read the libel, if you have not yet read it; if you have, read it again, and ſee if you can doubt whether this is not a libel upon Mr. Onſlow. Does he not almoſt take upon him to prove it, coupling it with every inſinuation he could, in order to

impreſs the world with a bad opinion of him? To defy, to call upon him, "Bring your action, "I will give you my name;" and yet it ſeems at the beginning as if he was doubtful to give up his name, becauſe, he ſays, it would be *dangerous to the publiſher*. This is the language of a man who ſeems to think, that if the publiſher would give him up, he was liable to puniſhment for ſuch a libel as this before you. He undertakes to give his name; and Mr. Onſlow calling upon the printer, in conſequence of this letter, ſays, "Who is your author?" "Sir, "the rev. Mr. Horne is; and he has autho- "riſed me to tell you ſo." Now, gentlemen, think of the ſituation Mr. Onſlow was then in. There was not only this libel publiſhed to the world, and in a manner which ſpoke the writer not a common ſcribbler; but here is a man well known to the world, with many friends. Scandal takes to the covert, and does not openly expoſe itſelf. Muſt not every man ſay, till Mr. Onſlow proved his innocence, that it is no ſcandal; Mr. Onſlow is guilty of the charge? There is not a man but muſt have believed that Mr. Onſlow was conſcious to himſelf that he deſerved ſo much of this imputation, that he dare not expoſe it. Is there a man that hears me can doubt it? Can there be a man, ſeeing a man charged ſo, can doubt it?—The author expoſed, a man

conſi-

conſiderable enough to be taken notice of; and yet Mr. Onſlow does neglect to do it: he dare not do it, becauſe he has not done it. It became Mr. Onſlow either to ſink under this imputation, groſs and falſe as it is, or to vindicate himſelf to a jury. There were two methods to call upon this gentleman; he might either proſecute him criminally, or have brought a civil action. Mr. Onſlow has undoubtedly done wiſely in taking the latter method: in the former, Mr. Horne could not have juſtified it. The forms of proceeding would not admit him to ſay the libel was true; and if Mr. Onſlow had taken that method, the malicious world would ſay he had taken it leſt Mr. Horne ſhould come in and ſay it was true. He choſe to lay it therefore before a jury of his own conſtituents; of thoſe freeholders before whom he was traduced; and he laid it before them, that if Mr. Horne had ſaid true, Mr. Onſlow would have been pleaſed he had pleaded it, that he might have a full and fair opportunity of proving to you every part of the ſtory to be falſe. But that is not the caſe. Mr. Horne does not ſay the ſtory I have told is true; but he ſays he is not guilty; that is, either he did not publiſh it, or it is not an abuſe of Mr. Onſlow. That he did publiſh it, we ſhall prove to you; and I leave to your own conſideration, whether any

man of common ſenſe can doubt whether it is abuſe or not, whether it is libellous or not. If we do that, the conſideration, gentlemen, for you will be, what damages you will give Mr. Onſlow for this injury; and in judging of them you undoubtedly will, with coolneſs and with temper, without anger and without partiality, conſider the ſituation of the party, and the nature of the injury. Gentlemen, you will conſider this is an attack upon a gentleman in high office, of diſtinction, and who has the honour of repreſenting this county in parliament. You will conſider it is an attack upon him in thoſe very offices; is a charging him with behaving ſo in his office of lord of the treaſury, that the noble lord that preſides at that board did inſiſt upon his diſmiſſion. You will find Mr. Onſlow is charged with being ſo corrupt, as not to be proper or capable to ſit at that board. You will ſee, gentlemen, he is pointed out to the freeholders as a man not fit to ſit in future in parliament for them. He tells them, all Mr. Onſlow's fear and zeal is not for his honour and reputation, but of loſing his ſeat in parliament. It has always been underſtood, that abuſe of this kind requires more exemplary puniſhment, where the perſon abuſed is of high rank, and the ſcandal applies to him in that ſituation. Even in the caſe of the loweſt

tradeſman,

tradeſman, words that would not otherwiſe be actionable, are held ſo, when applied to the employment by which himſelf and family are ſupported. You will conſider likewiſe *by whom* theſe libels are written. This is not a low paltry ſcribbler, who for a few pence, or perhaps a dinner, writes in his garret for the papers; but this is a gentleman, a clergyman, whoſe character and profeſſion may add weight to the ſcandal. Therefore it ſeems to me to be a cauſe that will call for exemplary damages, if Mr. Horne is proved to be the author of this libel. I do not mean to inſinuate what thoſe damages ſhould be; they are in your breaſt; and I ſhould behave very indelicately indeed, if I hinted at them. I hope they will be ſuch as ſhall convince men for the future, that let their wit, capacity, or connections be what they may, they ſhall not dare to proſtitute them to ſo bad a purpoſe, as to attack wantonly, and without foundation, their neighbour's reputation.

My lord, we will prove Mr. Onſlow is a lord of the treaſury, and a privy-counſellor.

Council for the defendant. We will not diſpute that.

Henry Sampſon Woodfall ſworn.

Examined by Mr. Cox.

Q. You are concerned in printing the Public Advertiſer?

A.

A. Yes.

Q. Do you know any thing of that letter? *(Shewing him the Public Advertiſer.)*

A. Yes.

Q. Can you tell from what it was printed?

Mr. Serjeant Glynn. I believe you are the printer?

A. Yes.

Q. This letter appeared in the Public Advertiſer, a paper of your printing?

A. Yes.

Q. I am inſtructed to aſk you a queſtion, whether you have not ſome promiſe of indemnity upon your giving evidence?

A. No.

Q. Nor you have no letter nor aſſurance from Mr. Onſlow to that effect?

A. No farther than the public one that was printed.

Q. What do you mean, that is printed?

A. There was a letter read ſubſequent to this, that unleſs I gave up the author, he ſhould look upon me as the author.

Q. And if you give up the author, are you promiſed to be indemnified?

A. I have no promiſe at all.

Q. Where does that letter appear?

A. It was read juſt now. Mr. Horne authoriſed me to acquaint Mr. Onſlow that he was the author of that letter.

Mr.

Mr. Cox. Pleaſe to look at that letter. (*Shewing him another Paper.*) Do you know who is the author of that letter?

A. He ſent it me?

Q. How do you know that? What have you heard him ſay about it?

A. I have heard him ſay nothing about it; there was no enquiry into the author of the ſecond letter. When Mr. Onſlow wrote to me, he aſked, who was the author of the firſt letter? Mr. Horne authorized me to ſay he was the writer.

Court. What number is the firſt letter in?

Mr. Cox, 10913. The ſecond letter avows his being the author of the firſt. Did you obſerve the hand-writing of the ſecond letter?

A. I believe it to be Mr. Horne's.

Mr. Meſſing. Your lordſhip will permit the hand-writing to be aſked to, if the hand-writing is produced; but it cannot be conſiſtent with the rules of evidence to aſk that queſtion.

Mr. Cox. The firſt letter he is authorized to aſſert, is Mr. Horne's—the letter is out of our power; but if I call upon the printer of the public paper, and he tells me he printed this, from a letter which he knows to be the hand writing of Mr. Horne, I ſubmit to his lordſhip, that is ſufficient; that is bringing it ſufficiently home to Mr. Horne.

Mr.

Mr. Serjeant Leigh. Your lordſhip ſees this is a cauſe where an acknowledgment is proved by Mr. Woodfall to it.—The ſecond letter, upon the face of it, from the ſame perſon, from one who admits the firſt letter to be his. Mr. Woodfall's evidence is, that Mr. Horne did not avow it to him, for he was never aſked the queſtion about, but he had reaſon to think it was from Mr. Horne, becauſe he knew Mr. Horne's hand writing; and that the writing of the paper was, as he believes, Mr. Horne's hand. Mr. Horne has admitted one; if the other comes in the ſame hand, is not that evidence? It muſt be left to the jury, whether the writer of the ſecond letter is the ſame as the writer of the firſt; and your lordſhip ſees it is not neceſſary in a caſe of this kind, to prove the original: nay the directing the printer to publiſh it, is a publication; it is not, therefore, a charge upon a written letter, that is not the charge in the declaration that we go upon. The declaration of Mr. Horne to Mr. Woodfall, authorizing him to publiſh it, that is evidence. Suppoſe he had ſaid Mr. Horne told him ſo, that is evidence. If there is any other mode by which he can be certain that Mr. Horne ſent it, that is equally good. It came to me in a hand which I believe was Mr. Horne's, having ſeen him write.

Mr. Serjeant Glynn. Though the gentleman ſays that this queſtion before your lordſhip is extremely clear, I have the ſame conception of the matter, that it is one of the plaineſt, that it is one of the cleareſt, that it is one of the moſt indubitable points that ever was formally ſubmitted to the conſideration of a judge. I agree with brother Leigh, that if it is proved that Mr. Woodfall was authorized by Mr. Horne to publiſh this paper, that is evidence of publication: I ſay, if it is proved; but I know of no proof but by legal evidence; and I do ſubmit, that the evidence produced to your lordſhip is ſo far from being legal, that it is in oppoſition to one of the moſt clear, to one of the moſt neceſſary and ſacred rules of evidence to be found in the books. I apprehend, that in all caſes whatever, where a matter is to be made out by a paper, that paper muſt be produced: Mr. Woodfall now appears to teſtify againſt Mr. Horne, that he received that paragraph which appears in the paper, and which is the foundation of the preſent evidence, from Mr. Horne: how does he ſay he received it? what is the medium through which Mr. Woodfall is enabled to give evidence of its coming from Mr. Horne? By a written paper. If it is by a written paper, I ſhould be very glad to know, in any one inſtance whatever, where a verbal account

is admitted to be given of a written paper? If there was no ſuch written paper, would Mr. Woodfall's evidence be admitted to any purpoſe whatever? If there was none, Mr. Woodfall's evidence would be of another kind.—It was dictated by Mr. Horne, — I writ it down from his mouth, and ſo printed it. What is now the evidence againſt Mr. Horne? Not that he dictated the words — not that Mr. Woodfall received it from Mr. Horne; not that Mr. Horne acknowleged it after it appeared in print; but Mr. Woodfall thinks a certain letter received by him, was Mr. Horne's hand-writing. Shall the queſtion of Mr. Horne's hand-writing be now tried by a hearſay, verbal evidence, by the opinion and conjecture of Mr. Woodfall? I conceive the reaſon why, in all places whatever, the law requires the written paper to be produced, as the moſt clear evidence, and of abſolute ſafety to the ſubject in all caſes whatever: if the letter is produced, the queſtion about the hand-writing then comes on properly; Mr. Woodfall may then declare, if his conſcience will enable him to do it with preciſion, that it was wrote by this or that man. What does it all ſtand upon? It all ſtands upon that written paper. Is that written paper here to be examined? does that written paper undergo any examination before your lordſhip? and if a verdict ſhall paſs upon the

the examination of that written paper, is he not convicted upon evidence contrary to law? Becauſe if that written paper was produced, examination might be had of that written paper; Mr. Woodfall need not ſay upon his recollection, I believe that paper did once appear to me under the hand-writing of Mr. Horne. No, the paper is ſhewn in court, may be examined by all:—that is Mr. Horne's hand-writing, I ſtand to it; there is a teſtimony fairly given, for which Mr. Woodfall is not only anſwerable to God and his conſcience, but to the laws of the land, if he had given a falſe evidence. Is not the ſecurity of the ſubject totally taken away, if this evidence is admitted? Where is the ſecurity of the ſubject, if the law has not influence upon the conſciences of men, and pains and proſecutions if the evidence is falſe? We ſhall now ſay it is falſe; where is the evidence that can confront Mr. Woodfall? What is the ſituation of the man, that is to defend himſelf againſt evidence of this ſort?——I have been large upon it, becauſe the gentlemen on the other ſide do treat it as clear. I know no circumſtances that are to vary this from the ordinary, or common rules of evidence; but if any evidence of this ſort is to be broke in upon, I hope this will be the laſt it ſhall ever be attempted, or permitted to be broke in upon.

It has been ſaid, we have not the paper. Is it deſtroyed by inevitable accident? Is it ſurpreſſed by the fraud of the defendant? Theſe are the only two caſes wherein a perſon is permitted to give parole evidence. —— My lord, no account of that ſort has been given. If ſuch a letter was written to Mr. Woodfall, why has he it not now to produce? I will ſay no more, only one conſideration upon the particular ſituation of Mr. Woodfall: he, liable to the action himſelf, reſts upon the teſtimony he is now giving, and of the conviction he hopes to obtain upon Mr. Horne, to ſcreen himſelf.—Is this a caſe upon which the common ordinary eſtabliſhed principle of law is to be departed from; to let Mr. Woodfall give a parole evidence againſt Mr. Horne, which is to produce his own indemnification and ſecurity? The reaſons are ſtrong: if the point was not clear, reaſons applying to the caſe are ſtrong why it ſhould not be admitted.

Mr. Meſſing. Does the plaintiff undertake to prove the tenor of the thing? Can ſuch a tenor be proved by the teſtimony of Mr. Woodfall, that he once ſaw a writing which he thinks to be Mr. Horne's? Can that be ſafe for the ſecurity of the ſubjects of this kingdom? can that be proper? And that is educed to prove the

the very tenor literatim. This would be of the moſt dangerous conſequence to the ſubject. Your lordſhip knows the leaſt alteration, the leaving out a letter, or adding a word, the moſt minute alteration, may make that libellous, which was not originally ſo. This ſtrikes me with what Mr. Serjeant Glynn has mentioned very ſtrongly, that it ought not to be admitted.

Mr. Serjeant Leigh. In anſwer to what the gentleman ſaid laſt, this is not a declaration grounded upon a written letter, but upon a printed paper. The fact to be proved is, whether Mr. Horne authoriſed the printing it? To be ſure, if this is a declaration upon a written letter, what was obſerved laſt is moſt certainly true; you muſt compare it with the declaration, to ſee if it anſwers, undoubtedly. So what brother Glynn ſays upon that is moſt certain. If Mr. Horne was to be convicted of having authoriſed the printing of this letter, the letter itſelf muſt be compared with the declaration; that would be the ſame. But here the queſtion is, firſt, Whether we have laid our declaration from the printed paper, with which we charge him to be the publiſher? And, ſecondly, Whether this is that paper that we charge him with publiſhing. If we declared upon the written letter, we muſt produce it; there

cannot be a doubt about that. What I ſubmit to your lordſhip is, whether, in this caſe, which is to prove a warrant or authority from Mr. Horne to publiſh this, which will make him the publiſher; whether, in that caſe, his having it from Mr. Horne is not the ſame as if Mr. Horne had told him ſo? I ſhould be glad if Mr. Woodfall be aſked two more queſtions, to ſee what his evidence is.

Court. Upon this point that has been ſtarted, my opinion is extremely clear. It is very true, you are not going upon the written letter, but the printed paper. Now with regard to the firſt paper, Mr. Horne authoriſed the printer to declare to Mr. Onſlow that he was author of the letter contained therein. Then what comes out with regard to the ſecond? He tells you, Mr. Horne ſent him the ſecond letter: he is aſked how he knows it? He ſays he believes it to be his hand-writing. Upon that, the objection is taken by brother Glynn, that he ſhall not give evidence upon his memory of the hand-writing of a letter that is not produced; and his objection ſeems founded in truth and law. The witneſs ought to have that letter here, if he proves Mr. Horne to be the author of it, merely upon the compariſon and ſimilitude of hands: if it can be proved by any other means;

if

if Mr. Horne did authoriſe him to ſay that it was his letter; if he had it from Mr. Horne himſelf; it would not be neceſſary then, perhaps, to produce it: but if you come to ſimilitude of hands, if it reſts merely upon that evidence, to be ſure I cannot admit the printed letter to be read as Mr. Horne's, without producing the written one.

Mr. Cox. Whether or no Mr. Horne ſaid any thing to you, with regard to what he would do, when he authoriſed you to ſay he was author of the firſt letter?

A. I cannot remember any particular circumſtances; he told me I might tell Mr. Onſlow he was the author.

Q. You don't remember any thing of the other letter?

A. No.

Q. When did you ſee the written letter laſt?

A. We never keep any copies; it is a matter I thought I ſhould not be called about. I never keep the letters; if I did, I muſt have a room as big as the largeſt barn in the county to hold them.

Q. Upon your oath, is this letter deſtroyed?

A. To the beſt of my knowledge and belief it is.

Q. Have you never told any body that Mr. Horne

Horne had acknowledged this ſecond letter as well as the firſt ?

A. I told Mr. Onſlow that I was at liberty to acquaint him that Mr. Horne was the author of the firſt letter.

Q. Whether you have ever told any body that Mr. Horne authoriſed you to tell Mr. Onſlow, that he was the author of the ſecond letter ?

A. I do not recollect any ſuch thing.

Q. You believe it to be deſtroyed ?

A. Yes. I have moved from one houſe to another.

Q. Have you made any ſearch for it ?

A. I did make a ſearch, and did not find them. When I was called upon with this ſubpœna, I looked, but could not find them.

Q. Have you ſeen the letter within theſe two months ?

A. I am pretty certain I have not ; I cannot have ſeen it ſince September, becauſe I moved in September.

(The firſt letter read.)

Court. You printed the ſecond letter ?

A. Yes.

Court. In that there are theſe words ; " In " return for yours, I do hereby direct the prin- " ter to give you my name." How came you to print that, if the author had not authoriſed you to give Mr. Onſlow his name ? *A.* I

A. I had no authority to name the author of the ſecond letter.

Mr. Serjeant Glynn. I would aſk ſome queſtions relative to the firſt letter. Did not Mr. Horne object to you, that that letter was not publiſhed agreeable to his direction?

A. Yes.

Q. There were material variations in it?

A. There was a variation.

Q. Poſſibly you may recollect it?

A. It was an addition in the firſt line.

Q. Then that printed paper is not entirely Mr. Horne's?

A. There was an error of the preſs.

Q. Then this very paper too is not, in ſo many words, the paper Mr. Horne ſent to you?

A. There was an alteration in the firſt line.

Mr. Serjeant Leigh. What was the alteration?

A. Eſq.

Q. But that is the letter he authoriſed you to acknowledge he was author of?

A. Yes.

Mr. Meſſing. They undertake to prove the tenor; and if there is any variation, though ever ſo ſmall, it will ſet aſide this action. There is a caſe where the word was *nor* for *not*, the ſenſe not being in the leaſt altered: this was in the Queen and Drake. It is reported in Salkeld, 660; and the determination of the court was,

that this variation was fatal. With reſpect to this variation, it is ſaid, Aſh-Court, 11 July, in the paper that is read; it is the 11th in the record; that comes juſt within the objection that I have cited of *nor* for *not*.

Mr. Serjeant Leigh. I apprehend that is the 11th; it is not neceſſary that it ſhould have *th* over it.

Court. In common underſtanding it is not neceſſary.

Mr. Serjeant Glynn. But the common way of proving the tenor, ties them down to prove it.

Mr. Serjeant Leigh. I will eaſe my brother a little, for there is a count without it.

Mr. Serjeant Glynn. Now apply to that count, you will find fifty variations.

Mr. Serjeant Leigh. No, I will truſt your diligence to find them out.

Court. Then the third count is right?

Mr. Serjeant Leigh. Yes; does your lordſhip think the variance fatal?

Court. Yes, I really think ſo; you ought to prove it *literatim* in the words, letters, and figures; it ſtrikes me as being ſo.

Mr. Serjeant Leigh. It ſeems to me, that 11 and 11th mean the ſame thing.

Court. Your argument would have done better, if in the record they had wrote it *eleven* in letters; for 11 in figures, and *eleven* in letters, certainly read both alike. But they have wrote

the

the figures, and put the *th* over it; which alters the reading and the grammar.

Mr. Serjeant Leigh. It is an addition, but not to the ſound of the word. No man would read it July *eleven* to be ſure; they ſtand as much for *eleventh*, as they ſtand for *eleven*. Two units, ſtanding as a mark of date, ſignify *eleventh*; ſtanding as a number, they ſignify *eleven*.

Court. Your ſolution then is, that theſe are two different marks to ſignify the ſame word; one mark is uſed in the printed letter, another in the record; in the letter two units, in the record two units and *th*; but the word ſo ſignified is ſtill the ſame. This ſeems the beſt way of putting it.

Mr. Serjeant Leigh. The principle of law is ſtrict, and ought to be kept ſacred; yet it ſeems to me to ſay, when two figures do ſtand for a word, the putting the *th* does not make the leaſt alteration in the ſenſe.

Mr. Cox. The alteration ſhould be in a word; it is only two letters; it muſt amount to a word; it is two inſignificant letters.

Court. If I admit the variation of a ſingle letter, I don't know where to ſtop.

Mr. Serjeant Leigh. It is not ſo material here; I only argue for the ſake of the precedent. In the caſe in Salkeld, *nor* and *not* are two diſtinct words; and though it is evidently a miſtake of

the ſcribe here, a man will read and underſtand what is meant. There the ſenſe is maimed; it is not ſo here in any reſpect. The alteration of the mark to ſtand for eleventh, ſeems as immaterial as if an *R* or *D* were made differently, by different hand-writings.

Mr. Meſſing. It was ſaid, in the caſe of Salkeld, it did not alter the ſenſe.

Court. We are not to conclude, becauſe the gentleman was a clergyman, that what he writes muſt be ſtrictly grammatical: he might mean to write July *eleven.* Dates are written differently. Some put the figures before the name of the month, ſome after; and in deſcribing the year, the Scotch write, that ſuch a thing happened in *the* 1770, not in 1770, as we do.

Mr. Serjeant Leigh. They are properly eleventh when joined to a date.

Court. Two units ſtand properly for *eleven*, and not for *the eleventh.*

Mr. Meſſing. Two units mean *two* in the Roman figures.—Here is a very material variation in the laſt count in the record, *pounds* for *pound.*

Mr. Serjeant Glynn. Suppoſing the printed paper to be nonſenſe, you have no right to make ſenſe of it; and ſuppoſing it to be ſenſe, you have the leſs right to make nonſenſe of it. We are in your lordſhip's judgment?

Court. I apprehend the law does ſtand ſo, that if you undertake to prove the tenor of a libel,

libel, it muſt appear to be literally and numerically the ſame. Here you do not declare upon the *purport*, but have declared upon, and undertaken to prove the *tenor*; therefore, in that caſe, you ought to have copied it exactly, and ſhould have taken more pains in examining it, before it came down to be tried. Had it been a record of the crown-office, it would have been ſent down more correct.

Mr. Serjeant Glynn. There is a clerk of aſſize upon the weſtern circuit will never draw one right; he puts always for *force and arms*, *force and hands*.

Mr. Serjeant Leigh. Is that your lordſhip's opinion? This is merely a civil action.

Court. I do not, on the ſudden, recollect any caſe of a civil action where it has been ſo determined; but it ſeems to be the ſame thing. This is an action founded upon a ſuppoſed crime. I own it is very nice, and ſhould be glad if you could draw me a line, to get rid of ſo minute a nicety; but I take the law to be ſo ſettled.

Mr. Serjeant Leigh. The true line is, where there is an alteration of the ſenſe.

Court. I am afraid that will not do. That would let in a hundred altercations, whether the ſenſe is or is not altered, and leave too much in the diſcretion of the judge: *tenor* and *purport* would then ſignify exactly the ſame. If you can draw me any rational line, at which I can

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ſtop, conſiſtently with the rules of law, I would not conſent to non-ſuit a plaintiff, in a cauſe of ſuch expence and expectation, upon ſuch an immaterial variation as this. It is as immaterial as poſſible, for the ſenſe is not altered in the leaſt. If I am wrong in it, can you pu me in any method to ſet it right?

Mr. Serjeant Leigh. Will your lordſhip make a caſe of it?

Court. I cannot make a caſe of it; for then there muſt be a verdict for the plaintiff, which my brother Glynn will never conſent to.

Mr. Serjeant Leigh. After being non-ſuited, we might move, perhaps, to ſet aſide the non-ſuit?

Court. Yes, you may; formerly you could not, being ſuppoſed to be out of court; but it has been allowed in ſeveral modern caſes. You have therefore my full conſent to move to ſet aſide the non-ſuit, and for a new trial, upon the ground of my being miſtaken in point of law.

FINIS.

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